

## **Appendix A**

### **EXECUTIVE ORDER 53 (2007)**

#### **OFFICE OF THE GOVERNOR COMMONWEALTH OF VIRGINIA**



*Commonwealth of Virginia*  
*Office of the Governor*

## *Executive Order*

### **NUMBER FIFTY-THREE (2007)**

#### **VIRGINIA TECH REVIEW PANEL**

The brutal murder of thirty-two members of the Virginia Tech community on April 16, 2007, was one of the most tragic events in the Commonwealth's history and in the history of our nation. One student killed thirty-two students and faculty members, wounded many more members of the community, and then took his own life. Many survivors, family members of victims, and other members of the Virginia Tech community will carry emotional scars throughout their lives.

It is essential for their sake, and for the safety of the many thousands of people on our college and university campuses, that we gain as much understanding as possible of what took place and why it took place in order to take steps to minimize the risk of a tragedy of this nature ever occurring again.

On April 16, 2007, I issued Executive Order 49 (2007), which established a "Declaration of Emergency for the Commonwealth of Virginia Due to Shootings at Virginia Tech." Three days later, in consultation with the Office of the Attorney General and leaders of the General Assembly, I commissioned the Virginia Tech Review Panel to conduct an independent, thorough, and objective incident review of the tragedy at Virginia Tech and to make recommendations regarding improvements that can be made in the Commonwealth's laws, policies, procedures, systems and institutions, as well as those of other governmental entities and private providers.

This Executive Order is being issued to describe certain actions already taken pursuant to Executive Order 49 and to provide formal clarification of the

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authorization I gave to the Panel to conduct its review commencing April 19, 2007.

### **Establishing the Review Panel**

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including without limitation Section 2.2-134 of the *Code of Virginia*, and subject to my continuing and ultimate authority and responsibility to act in such matters, I established the Panel as a gubernatorial commission effective April 19, 2007, to prepare a report to me and to gather such records and information necessary or helpful to providing such a report. This order shall expire on April 18, 2008, unless extended by a future executive order.

In accordance with Section 2.2-135(B) of the *Code of Virginia*, funding for the Panel shall be provided only from funds: (i) appropriated for the Governor's discretionary use; (ii) appropriated for the purposes for which the Panel was established; or (iii) contributed by the private sector for purposes for which the Panel was established. The Panel shall also be entitled, with gubernatorial approval, to make use of services provided on a *pro bono* basis by the private sector.

In accordance with Section 2.2-135(D) of the *Code of Virginia*, I will provide a report to the Senate Committee on Finance and House Committee on Appropriations every six months specifying the amount and costs of staff support and the sources of staff support.

### **The Panel's Mission**

On May 10, 2007, the Panel held its organizational public meeting in Richmond. At that meeting, I presented a charge to the Panel concerning its mission.

The Panel's mission is to provide an independent, thorough, and objective incident review of this tragic event, including a review of educational laws, policies and institutions, the public safety and health care procedures and responses, and the mental health delivery system. With respect to these areas of review, the Panel should focus on what went right, what went wrong, what practices should be considered best practices, and what practices are in need of improvement. This review should include examination of information contained in academic, health and court records and by information obtained through

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interviews with knowledgeable individuals. Once that factual narrative is in place and questions have been answered, the Panel should offer recommendations for improvements in light of those facts and circumstances.

In particular, the Commission shall have the following responsibilities:

1. Conduct a review of how Seung Hui Cho committed these 32 murders and multiple additional woundings, including without limitation how he obtained his firearms and ammunition, and to learn what can be learned about what caused him to commit these acts of violence.
2. Conduct a review of Seung Hui Cho's psychological condition and behavioral issues prior to and at the time of the shootings, what behavioral aberrations or potential warning signs were observed by students, faculty and/or staff at Westfield High School and Virginia Tech. This inquiry should include the response taken by Virginia Tech and others to noted psychological and behavioral issues, Seung Hui Cho's interaction with the mental health delivery system, including without limitation judicial intervention, access to services, and communication between the mental health services system and Virginia Tech. It should also include a review of educational, medical and judicial records documenting his condition, the services rendered to him, and his commitment hearing.
3. Conduct a review of the timeline of events from the time that Seung Hui Cho entered West Ambler Johnston dormitory until his death in Norris Hall. Such review shall include an assessment of the response to the first murders and efforts to stop the Norris Hall murders once they began.
4. Conduct a review of the response of the Commonwealth, all of its agencies, and relevant local and private providers following the death of Seung Hui Cho for the purpose of providing recommendations for the improvement of the Commonwealth's response in similar emergency situations. Such review shall include an assessment of the emergency medical response provided for the injured and wounded, the conduct of post-mortem examinations and release of remains, on-campus actions following the tragedy, and the services and counseling offered to the victims, the victims' families and those affected by the incident. In so doing, the Panel shall to the extent required by federal or state law: (i) protect the confidentiality of any individual's or family member's personal or health

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information; and (ii) make public or publish information and findings only in summary or aggregate form without identifying personal or health information related to any individual or family member unless authorization is obtained from an individual or family member that specifically permits the panel to disclose that person's personal or health information.

5. Conduct other inquiries as may be appropriate in the Panel's discretion otherwise consistent with its mission and authority as provided herein.
6. Based on these inquiries, make recommendations on appropriate measures that can be taken to improve the laws, policies, procedures, systems and institutions of the Commonwealth and the operation of public safety agencies, medical facilities, local agencies, private providers, universities, and mental health services delivery system.

In conducting its review, the Panel should coordinate with law enforcement authorities to avoid conflict with the ongoing criminal investigation of the Virginia Tech tragedy. The Panel should also coordinate with the Virginia Supreme Court's Commission on Mental Health Law Reform to avoid conflicts and to ensure that the Court's review and the Panel's review are conducted in an efficient and mutually beneficial manner.

At its discretion and upon request to the Governor, the Panel may seek permission to work with the Virginia Crime Commission (Section 30-156 of the *Code of Virginia*, et seq.) in order to gain access to witnesses and/or information not otherwise readily available to the Panel.

In conducting its review, the Panel and/or TriData should continue to offer the families of the deceased the opportunity to provide input to the Panel publicly or privately and to offer those families who so desire an opportunity to be apprised periodically of the Panel's progress.

#### **Composition of the Panel**

The Panel shall consist of eight members appointed by the Governor and serving at the pleasure of the Governor. As previously announced in statements released on April 19, 2007, and April 21, 2007, the Panel members include:



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- Panel Chair Col. Gerald Massengill, a retired Virginia State Police Superintendent who led the Commonwealth's law enforcement response to the September 11, 2001, attack on the Pentagon and the sniper attacks that affected the Commonwealth in 2002.
- Panel Vice Chair Dr. Marcus L. Martin, Assistant Dean for the School of Medicine at the University of Virginia and a Professor in its Department of Emergency Medicine.
- Gordon Davies, former Director of Virginia's State Council of Higher Education for Virginia (1977-1997) and President of the Kentucky Council on Postsecondary Education (1998-2002).
- Dr. Roger L. Depue, a 20-year veteran of the FBI and the founder, past president and CEO of The Academy Group, Inc., a forensic behavioral sciences services company providing consultation, research, and investigation of aberrant and violent behavioral problems.
- Carroll Ann Ellis, Director of the Fairfax County Police Department's Victim Services Division and a faculty member at the FBI National Academy, the National Victim Assistance Academy, and Northern Virginia Community College.
- Governor Tom Ridge, former Governor of Pennsylvania (1995-2001) and Member of the U.S. House of Representatives (1983-1995) who was also the first U.S. Secretary of Homeland Security (2003-2005).
- Dr. Aradhana A. "Bela" Sood, Chair of Child and Adolescent Psychiatry and Medical Director of the Virginia Treatment Center for Children at VCU Medical Center.
- The Honorable Diane Strickland, former judge of the 23<sup>rd</sup> Judicial Circuit Court in Roanoke County (1989-2003) and co-chair of the Boyd-Graves Conference on issues surrounding involuntary mental commitment.

The eight members of the Panel are nationally recognized in many different fields, bringing expertise in the areas of law enforcement, security, governmental management, mental health, emergency care, victims' services, the Virginia court system, and higher education.

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Members of the Review Panel shall serve without compensation. They may receive reimbursement for expenses incurred in the discharge of their official duties.

Pursuant to Section 2.2-2103 of the *Code of Virginia*, I may from time to time delegate staff to the Panel, if so needed, through the Office of the Governor, the Governor's cabinet secretaries or any other such agency that I may designate.

Effective April 19, 2007, and pursuant to Section 2.2-4303(F) of the *Code of Virginia*, the Commonwealth on behalf of the Panel retained the services of the TriData division of System Planning Corporation to provide independent research and staff support to the Panel. TriData has extensive experience in both emergency preparedness/response planning and conducting reviews and assessments.

For example, TriData reviewed the response to the Columbine High School shootings in Colorado in 1999 and prepared a report published by the Federal Emergency Management Agency's U.S. Fire Administration. TriData also provided the Commonwealth with an assessment of the Commonwealth's response to Hurricane Isabel in 2003 and a review of the alleged anthrax scare at the Pentagon and Department of Defense offices in 2005. Additionally, TriData has performed studies and analyses for the more than 250 federal, state and local agencies, including without limitation the U.S. Departments of Justice and Homeland Security.

Effective May 29, 2007, I appointed the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, to provide independent legal advice to the Panel on a *pro bono* basis. I did so pursuant to Section 2.2-510(4) of the *Code of Virginia*, after receiving advice from the Office of the Attorney General that the appointment of such outside counsel was necessary and appropriate. Skadden Arps has extensive experience in representing special commissions and boards of inquiry.

Direct expenses for this effort, exclusive of staff time, are estimated at \$ 400,000.

#### **Further Designations and Directives**

To ensure full cooperation with the Panel's review, I direct that all agencies and political subdivisions of the Commonwealth, to the greatest extent permissible by law including without limitation authority of this Executive Order, provide any information, records, or assistance that may be required by the Panel, in accordance with its duties, including without limitation any assistance that may be

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required in connection with the agencies' available power to issue subpoenas or to take testimony of any witness relevant to the Panel's inquiry.

In that regard, I direct Virginia Tech and other public education institutions, to the greatest extent permissible by law, to make available to the Panel any and all educational and health records regarding Seung Hui Cho that the Panel requests.

I further provide the Panel with all authority I can give it to obtain all such information, records, and assistance that may be required in accordance with its duties in order to complete its review.

I designate the Panel to be a health oversight authority empowered to conduct activities for appropriate oversight of the Commonwealth's mental health care and other health care systems, as necessary to complete the Panel's review in accordance with the mission set forth in this Executive Order.

The Panel shall have any authority I can give it to pursue records necessary to its mission by court order. This will include favorable consideration of requests to use my authority pursuant to Section 2.2-109 of the *Code of Virginia* to require any state officer, superintendent, board, or employee to appear before me, or any other person designated or empowered by me pursuant to Section 2.2-104 of the *Code of Virginia* and to produce documents relating to their offices and duties. Where necessary, I or my designee pursuant to Section 2.2-104 will issue subpoenas or other writs to enforce the provisions of Section 2.2-109. I will provide any such documents relevant to the Panel's mission to the Panel and invite a Panel member to participate in any meetings held pursuant thereto.

The records and information obtained by the Panel and TriData in preparing their report for my deliberative use shall be deemed working papers pursuant to Section 2.2-3705.7 of the *Code of Virginia*. I intend to make public the report and records provided to me with the report to the fullest extent possible without compromising the Panel's and TriData's ability to secure such records and other related information for their review. Some of the records that the Panel will want to review may be difficult to obtain due to federal and state privacy laws. In those instances where the law requires the Panel and TriData, as a recipient of such records, to maintain the confidentiality of the records in order to receive them, I will also treat those documents as working papers when they are submitted to me.

It is important to the integrity of the conclusions reached by the Panel that the review be conducted on an independent basis. The flexibility needed for the Panel to conduct an independent, thorough, and objective incident review requires that the Panel's report be that of the Panel and not one by public officials of the Commonwealth of Virginia pursuant to a duty imposed by statute, or required by



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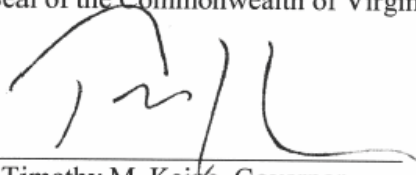
the nature of a public office. Based on the Panel's report, the Commonwealth will take remedial measures in order to improve public safety in the Commonwealth and ensure that a similar tragedy does not occur.

Neither the Panel members nor the Panel staff shall be subject to personal liability while acting within the scope of their duties, except for gross negligence or intentional misconduct.


**Effective Date of the Executive Order**

This executive order shall become effective upon its signing and shall remain in full force and effect until April 18, 2008, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 18th day of June 2007.

  
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Timothy M. Kaine, Governor

Attest:

  
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Secretary of the Commonwealth